

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Redevelopment of Spectrum to)
Encourage Innovation in the Use of)
New Telecommunications Technologies)

ET Docket 92-9

TO: The Commission

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS
ON THIRD NOTICE OF PROPOSED RULE MAKING

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The transition plan adopted by the Commission in this docket correctly balances the legitimate communications needs of incumbent microwave users and companies planning to implement new technologies, including personal communications services ("PCS").^{1/} This transition plan, however, must be coupled with a reasonable transition period in order to effectively permit new technologies to be introduced. American Personal Communications ("APC")^{2/} supports a three-year general transition period.

Under the approach to microwave migration APC has proposed from the very outset and which the Commission adopted in the Order, a uniform, national "transition period" would be redundant. Under this approach -- which no party has moved to

^{1/} See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report & Order and Third Notice of Proposed Rule Making, FCC 92-437 (ET Docket 92-9, October 16, 1992) (the "Order").

^{2/} American PCS, L.P., d/b/a American Personal Communications, a partnership of American Personal Communications, Inc. and The Washington Post Company.

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reconsider^{3/} -- no microwave licensee will be required to move unless requested to do so, unless facilities comparable to the incumbent's current 2 GHz facilities can be constructed at the new frequencies and unless all costs are paid by the party seeking the relocation.^{4/} This focus on the particular needs of the incumbent to be relocated fully protects incumbent microwave users and meets completely Congressional concerns about preserving incumbents' reliability and protecting them from expending funds to relocate to other suitable bands.^{5/} The Commission's transition plan is, without question, unique in the world in its protection of incumbent microwave users.^{6/}

^{3/} Three petitions for reconsideration or clarification are pending, but none attacks the basic parameters of the Commission's transition plan. See Utilities Telecommunications Council, Petition for Clarification and/or Reconsideration (ET Docket 92-9, filed November 30, 1992); American Public Power Association, Petition for Clarification (ET Docket 92-9, filed November 30, 1992); Petition of Apple Computer, Inc. for Clarification or Reconsideration (ET Docket 92-9, November 30, 1992).

^{4/} Of course, public safety microwave users would not be required to move even under these circumstances. See Order, ¶ 24.

^{5/} This focus on reliability and full reimbursement of costs meets fully the expressed concerns of the Senate, which had considered legislation to address "the legitimate concerns of the existing users of the 2 GHz band about reliability and cost." The Commission's focus on reliability and cost protection also is consistent with the views of Senator Hollings, who was concerned with "the legitimate concerns of the 2 Gigahertz communications band regarding the reliability and costs of their communications networks." Statement by Senator Ernest F. Hollings on Today's FCC Decision Regarding the 2 Gigahertz Communications Spectrum (September 17, 1992).

^{6/} In the United Kingdom, France, and elsewhere in the European Community, 2 GHz incumbent users are being displaced immediately to clear spectrum for PCS. In the United Kingdom,

Accordingly, it is difficult to discern a legitimate public interest benefit to be gained by any "transition period" preventing this well-balanced mechanism from coming into play for a period of years. After all, what purpose would be served by the transition period?^{1/} At the end of it, microwave users would be forced to move -- fully protected, of course, from bearing any cost or risking any diminution in reliability -- and nothing they would have done in the intervening three-year period would have altered their need to change frequencies or mitigate the very minor disruption

in particular, renewal of one-year licenses for incumbent microwave users simply was denied across the board to clear spectrum for PCS. "We didn't have to worry about clearing out the band -- we just had to decide to do it and get on with it." Comments of David A. Hendon, Director of Technical Affairs, Telecommunications & Posts Division, Department of Trade and Industry, at Personal Communications Services: An International Perspective (Annenberg Washington Program, November 16, 1992). In the Pacific Rim, incumbents have been ordered to vacate the 2 GHz band by a date certain -- by 1994 in many cases -- to accommodate PCS. In Japan, all 2 GHz microwave users will be relocated to the 6 GHz band, again simply by denying license renewal. Comments of Kiyoshi Oida, Assistant Vice Minister of Communications Policy, Ministry of Posts and Telecommunications, Japan, at Annenberg, supra (November 16, 1992). In no other country are new licensees required to pay to relocate microwave users, or are any microwave users permitted to remain in the 2 GHz band for technical or other reasons.

^{1/} The only possible advantage of the transition period would be to allow incumbents to receive compensation for moving frequencies during the transition period in excess of their costs -- a windfall to incumbents that, in the end, would be borne by PCS consumers -- and to allow them to build more 2 GHz links that might then have to be relocated to new frequencies, also at the public's expense. But even representatives of incumbent users claim they have no interest in garnering funds above their reasonable costs for migrating to other frequencies.

involved in changing to new facilities. But a compromise has been struck and APC is willing to live with it, provided that it is implemented on reasonable terms.

First among these terms, it is absolutely crucial to the success of new technologies -- at least in the case of PCS -- that the period of years chosen be as brief as possible. APC has filed in this docket an authoritative analysis of each microwave path in the 11 largest markets in the United States.^{8/} This analysis demonstrates that under several of the allocation structures proposed by the Commission in the PCS docket, it will be virtually impossible to implement PCS in key urban areas without relocating some incumbent microwave users.^{9/} Comsearch, in a study filed January 8, 1993 in the

^{8/} APC, Report on Spectrum Availability for Personal Communications Services Sharing the 1850-1990 MHz Band with the Private Operational Fixed Microwave Service (November 1992).

^{9/} See Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision, 7 F.C.C. Rcd. 5676 (1992). In particular, the Commission's proposal to allocate 20 MHz to each PCS licensee would require a significant amount of microwave relocation from the very outset to permit a workable PCS system to be constructed (a single microwave user could block an entire area). The Commission's preferred option of allocating 30 MHz to each PCS licensee could be a preferable alternative, but still would require substantial relocation. APC's proposal to allocate 40 MHz to each PCS licensee would permit PCS to be implemented with minimal relocation of incumbents from the outset, but some incumbents in some highly congested markets still will be required to migrate in the near term. See Comments of APC (Gen. Docket 90-314, Nov. 9, 1992); Reply Comments of APC (Gen. Docket 90-314, Jan. 8, 1993).

PCS docket, reached similar conclusions.^{10/} If the ability effectively to relocate incumbent users is stalled for years, it will be impossible for PCS to be implemented successfully and the myriad potential benefits of PCS to the telecommunications marketplace, our domestic economy, and our balance of trade will be lost.^{11/}

Accordingly, APC acquiesces in a transition period not to exceed three years -- a period which is in full accord with Congressional intent.^{12/} A lengthier period would enable incumbent users with spectrum that is in high demand to extract windfall profits from new licensees by exploiting

^{10/} See Comsearch, Analysis of the 20 MHz, 30 MHz, & 40 MHz PCS Block Allocations (Gen. Docket 90-314, filed January 8, 1993). Comsearch points out that a single microwave user would block a PCS licensee under a 20 MHz allocation. Importantly, Comsearch notes that public safety microwave paths -- which will not be subject to mandatory relocation -- comprise a large percentage of incumbents in major markets (46.3 percent in San Francisco, for example, and 27.4 percent in Los Angeles).

^{11/} See Comments of APC, pp. 2-3 (Gen. Docket 90-314, Nov. 9, 1992).

^{12/} In the conference report deleting the Senate amendment to restrict the Commission's use of funds to develop new technologies, the Appropriations Committee suggested only that "appropriate consideration" be given to the Senate's suggested eight-year transition period and did not suggest that it would expect an eight-year transition period to be adopted. In fact, a transition period of eight years was explicitly opposed by many leaders in Congress. See Letter from Hon. Edward J. Markey & Hon. Matthew J. Rinaldo to Hon. Neal Smith, August 6, 1992, at 3; see also Letter from Hon. John Dingell to Hon. Thomas S. Foley, August 5, 1992, at 3-4; Statement of Hon. J. Robert Kerrey, Congressional Record, pp. S-10348-10349 (July 27, 1992); Statement of Hon. John Danforth, Congressional Record, p. S-10348 (July 27, 1992); Letter from Hon. Frank R. Lautenberg to Hon. Ernest F. Hollings, September 2, 1992, at 1-2.

exclusive rights in a public resource,^{13/} delaying PCS implementation and preventing small businesses and entrepreneurial firms from participating in new technologies. As Chairman Markey has noted:

As a nation, we cannot afford an eight year roadblock. With respect to new technologies, eight years is a lifetime, and with respect to the much-needed improvement of our economy, eight years is an intolerable delay. The United States must move expeditiously to capitalize on emerging telecommunications technologies as the vehicle for economic revitalization and retention of our lead as the world's most technologically advanced nation.^{14/}

A transition period lengthier than three years would make it even more difficult for proponents of emerging technologies to convince investors and capital markets that the Commission is committed to making spectrum available for new technologies.

^{13/} See Comments of the National Telecommunications & Information Administration, p. 14 (June 8, 1992):

In these circumstances, existing users could, in effect, have monopoly-like control over access to spectrum that may be critical to the new users, a situation that could make negotiations with new users more difficult. In some cases, an existing user operating on spectrum of extreme importance to a new user might choose to 'hold out' in an attempt to extract all the economic value of the new license. In other cases, an existing user might choose to simply not negotiate, thus limiting or prohibiting the development of the new service.

^{14/} Letter from Hon. Edward J. Markey & Hon. Matthew J. Rinaldo to Hon. Neal Smith, August 6, 1992, at 3.

The briefest transition period possible -- which appears to be three years -- thus should be adopted.^{15/}

Commencement of Transition Period. The Commission proposes to begin this transition period from the date on which the report and order in this docket dealing with rechannelization of upper microwave bands is released. See Order, ¶ 27. APC believes it would be more appropriate and equitable to begin the transition period from the date on which the transition plan was adopted -- that is, September 17, 1992. That is the date on which incumbent microwave licensees effectively were put on notice that involuntary relocation would, in fact, be required.^{16/} Rechannelization of the upper microwave bands is not particularly significant to the commencement of a transition period -- under the Commission's Order, no incumbent will be required to relocate to bands at which it cannot have "comparable facilities" at

^{15/} APC also supports the Commission's proposal to permit a "shorter transition period" for "those few geographic areas where there may be little or no spectrum available." Order, ¶ 28.

^{16/} Incumbents have been aware, of course, much earlier than September 17, 1992 that involuntary relocation was being considered. Formally, incumbents have known of the specific proposals at issue here since the release of the Notice of Proposed Rule Making in this docket in January 1992. For all practical purposes, incumbents knew well before the release of that Notice -- and at least since the release of the Notice of Inquiry in Gen. Docket 90-314 in June 1990 -- that PCS could be authorized in the 2 GHz band. In fact, incumbent groups have been actively involved in assessing certain PCS experimental licensees' efforts virtually from the outset, and the Commission heard testimony about incumbents' need for protection from two witnesses representing incumbents at the PCS en banc hearing held on December 5, 1991.

any rate. And commencing the transition period on this date would prevent any delay that might occur in finalization of the rechannelization matter from delaying the effective implementation of PCS in the United States.^{17/}

Unlicensed Devices. APC supports the Commission's proposal to impose no transition period on portions of the 2 GHz band in which unlicensed devices will be permitted.^{18/} Proponents of these devices argue that they will require clear spectrum in which to operate (unlike licensed PCS, which can share spectrum effectively with incumbent microwave users provided that each PCS licensee has a sufficient spectrum allocation). Because these services will not be able to operate at all until spectrum is cleared and because these services probably will be located in a portion of the 2 GHz band where less than 500 microwave incumbents operate, it makes sense not to apply a transition period to such services.

Incumbents displaced from this band should have a priority opportunity to relocate to any government spectrum at 1.71-1.85 GHz that becomes available. APC does not support, however, any "repacking" plan that would move incumbent users from portions of the 1.85-1.99 GHz band in which unlicensed services will be authorized to other portions of the 1.85-1.99 GHz band. Under such "repacking" proposals, it is quite

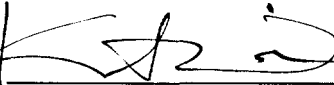
^{17/} APC would note that dates for comments and reply comments on the Commission's rechannelization proposal have been delayed twice to date.

^{18/} See id., ¶ 27.

likely that incumbent microwave users could be required to relocate twice -- once within the 2 GHz band to accommodate unlicensed PCS, and once to a higher band to accommodate licensed PCS. This process would place undue burdens on microwave users. It also would put new burdens and add new congestion problems on licensed PCS operators who would have to pay incumbents to make a second relocation.^{19/} If demand for unlicensed spectrum is sufficient to justify the substantial allocations sought by proponents of unlicensed services, that demand should permit industry groups to create mechanisms for financing the relocation of incumbents to suitable and reliable higher microwave bands.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

By: 
Jonathan D. Blake
Kurt A. Wimmer

Mr. J. Barclay Jones
Vice President for
Engineering

AMERICAN PERSONAL
COMMUNICATIONS
1025 Connecticut Ave., N.W.
Washington, D.C. 20036

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
(202) 662-6000

Its Attorneys

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^{19/} Under this proposal, licensed PCS operators effectively could subsidize the implementation of unlicensed PCS services. Such a process would be inefficient and counterproductive.